



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RTID 0648-XB215

#### Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** NMFS has determined that seven exempted fishing permit (EFP) applications warrant further consideration and is requesting public comment on the applications. All EFP applicants request an exemption from a single prohibition (the use of unauthorized gear to harvest highly migratory species (HMS)) under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) to test the effects and efficacy of using standard deep-set buoy gear (DSBG), and/or deep-set linked buoy gear (DSLBG), to harvest swordfish and other HMS off of the U.S. West Coast.

**DATES:** Comments must be submitted in writing by *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2020-0070, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2020-0070, in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Attn: Chris Fanning, NMFS West Coast Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802. Include the identifier “NOAA-NMFS-2020-0070” in the comments.

- *Email:* [wcr.hms@noaa.gov](mailto:wcr.hms@noaa.gov)

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Chris Fanning, NMFS, West Coast Region, 562-980-4198.

**SUPPLEMENTARY INFORMATION:** DSBG fishing trials have occurred for the past 11 years (2011-2015, research years; 2015-2021, EFP years) in the U.S. West Coast Exclusive Economic Zone (EEZ) off California. The data collected from this fishing activity have demonstrated DSBG to achieve about a 95 percent marketable catch composition. Non-marketable catch rates have remained low and all non-marketable catch were released alive. Due to DSBG being actively tended, strikes are capable of being detected within minutes of a hooking on the line; as a result, all catches can be tended quickly, with catch brought to the vessel in good condition. To date, DSBG has had five observed or reported interactions with protected species, four Northern elephant seals and one loggerhead sea turtle, which were not seriously injured and were released alive due to the quick strike detection of the gear. Northern elephant seals are protected

by the Marine Mammal Protection Act, and loggerhead sea turtles are protected by the Endangered Species Act.

DSLBG trials have produced similar data to DSBG activities. Swordfish and other marketable species have represented about 90 percent of the catch. Non-marketable species are released alive due to DSLBG quick strike detection and active gear tending. To date, there have been no observed or reported interactions with protected species using DSLBG.

At its June 2021 meeting, the Pacific Fishery Management Council (Council) received ten applications for EFPs in time for review and recommended that NMFS issue seven of these EFPs to authorize use of DSBG and/or DSLBG (see Table 1), and recommended further Council consideration of the remaining three EFP applications at its September 2021 meeting. Council recommendations can be found on the June 2021 meeting Decision Document here, <https://www.pcouncil.org/june-2021-decision-document/#HMS>.

At this time, NMFS is requesting public comment on the seven DSBG EFP applications recommended by the Council in June 2021. NMFS will take the Council's comments into consideration along with public comments on whether or not to issue these EFPs. If all seven of the June 2021 Council recommended applications are approved, a total of 52 vessels would be allowed to fish with permitted exemptions from the prohibitions related to unauthorized fishing gears used to target swordfish within the U.S. EEZ under the Fishery Management Plan for U.S. West Coast Fisheries for (HMS FMP) throughout the duration of their respective EFPs. Thirty-seven of the vessels would be permitted to fish with DSBG only and 15 of the vessels would be permitted to fish using both DSBG and DSLBG. Aside from the exemption described above, vessels fishing under an EFP would be subject to all other regulations implemented in the HMS FMP, including measures to protect sea turtles, marine mammals, and seabirds.

**Table 1 -- Summary of Deep-set Buoy Gear Exempted Fishing Permit Applications Recommended at the June 2021 Council Meeting.**

(<https://www.pcouncil.org/june-2021-briefing-book/#F>)\*

F.3 Attachment No.	Applicant Name	No. of Vessels	Fishing Method
1	Austin and Robert Ashe	1	Standard DSBG
3	Austin Brown	1	Standard and Linked DSBG
5	Miguel Ferre	1	Standard DSBG
6	Scott and Wyatt Hawkins	1	Linked DSBG
7	Blake Hermann	1	Standard DSBG
8	Markus Medak, Brian Sims, and Daniel Fuller	1	Linked DSBG
10	Mathew Rimmel	1	Standard DSBG

\* Linked DSBG vessels can also use standard deep-set buoy gear.

NMFS will consider all public comments submitted in response to this **Federal Register** notice prior to issuance of any EFP. Additionally, NMFS has analyzed the effects of issuing DSBG and DSLBG EFPs in accordance with the National Environmental Policy Act and NOAA's Administrative Order 216-6, as well as for compliance with other applicable laws, including Section 7(a)(2) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), which requires the agency to consider whether the proposed action is likely to jeopardize the continued existence and recovery of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 6, 2021.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries,*

*National Marine Fisheries Service.*